



## COLORADO

Department of Public  
Health & Environment

*Dedicated to protecting and improving the health and environment of the people of Colorado*

### \*\*\* CDPHE-CACFP PROCEDURE MEMO FDCH #15-04 \*\*\*

DATE: January 31, 2015  
MEMO CODE: FDCH #15-04  
SUBJECT: Health and Safety in the Child and Adult Care Food Program  
TO: Family Day Care Home Sponsors

When conducting Child and Adult Care Food Program (CACFP) monitoring of day care home providers, monitors must remember that the provider's main priority is to protect the health and safety of those in care. CACFP regulations require sponsors to notify appropriate licensing, health, or other authorities of conduct or conditions that pose an imminent threat to the health or safety of participants or to the public. Since the release of USDA policy, CACFP 13-2013, the Colorado Department of Public Health and Environment, Child and Adult Care Food Program (CDPHE-CACFP) received additional guidance regarding health and safety from the USDA in the December 2013 publication, *Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsors Handbook*. The CDPHE-CACFP also discussed the topic of health and safety with the Colorado Department of Human Services (CDHS), Division of Early Care and Learning and the Office of Early Childhood, which is the regulatory child care licensing agency in Colorado, to achieve a level of consistency between the CDPHE-CACFP, CACFP sponsors, and CDHS child care licensing professionals when making a determination of imminent threat to health and safety. This memorandum provides additional guidance to help sponsor monitors detect and report the types of problems that rise to this higher level of concern.

#### **Identifying imminent threat to health and safety and immediate response:**

CACFP regulation 7 CFR 226.16(l)(4)(i) requires sponsoring organizations to take immediate action described in this memorandum when any staff member identifies imminent threat to health and safety by either of the following methods:

- a) State or local health or licensing officials have cited a day care home provider for serious health or safety violations. If the CDPHE-CACFP receives notification of any imminent threat to health and safety citation, the CDPHE-CACFP will notify the sponsor.
- b) Sponsoring organization staff members identify an imminent threat to the health or safety of children while at a day care home, or that the day care home provider has engaged in activities that threaten public health or safety.

While at a day care home, CACFP monitors must exercise judgment in making a determination of imminent threat to health and safety. Although the CDPHE-CACFP does not require monitors to routinely assess health and safety issues during their onsite visits, sponsors must train monitors to the best of their ability to recognize and respond to conditions that pose an imminent threat to the health or safety of the children or the public.

The following list includes examples of what the CDPHE-CACFP and the CDHS would consider an imminent threat to health and safety in family day care homes. This list is not all-



inclusive, as the types of all possible dangerous situations cannot be fully anticipated. Likewise, some of the examples might vary in nature and severity, which requires judgment to decide whether children or the public are in danger. Depending upon the circumstances, the situations in this list may or may not result in the immediate issuance of an order of summary suspension of a child care license by the CDHS.

- Inadequate or incompetent supervision
- Providing care for twice the allowed number of children per qualified staff member
- Providing care for an excessive number of children beyond the authorized license capacity; over-capacity for very young children and infants is especially concerning, even when license capacity is exceeded by a small number of children and infants.
- Unsanitary or unsafe conditions in the physical environment that remain uncorrected after citation by the local health inspection agency or fire department; includes, but not limited to unsanitary food service or water, inadequate light, poor ventilation, lack of overall sanitation, inadequate heating, or malfunction of the fire detection or prevention system
- Lost or missing child
- Suspected maltreatment, abuse, or neglect of a child in the home
- Formal charge of child abuse in the home
- Suspected sexual, physical, or emotional abuse of staff, volunteers, or family members occurring while on the premises of the home
- Injuries to children requiring medical or dental care
- Illness or injuries requiring hospitalization or emergency treatment
- Mental health conditions or situations impacting the competency of the care provider
- Health and safety emergencies involving parents or guardians and visitors to the home
- Death of a child or staff member (including a death that occurred outside of the home that had resulted from serious illness or injury while in care at the home)
- Presence of a threatening individual who attempts or succeeds in gaining entrance to the home
- Care provided by staff under the influence of drugs or alcohol

If, for these or for any other reason, a monitor determines that a child or the public is in imminent danger, the monitor must call the proper authorities immediately and stay at the site until authorities have arrived. Wherever there is a situation in CACFP involving a health or safety threat, USDA Food and Nutrition Service expects monitors to respond to the problem when they see it. If the licensing agency cannot make an immediate onsite visit, the sponsoring organization will take action that is consistent with the recommendations and requirements of the licensing agency. Sponsor responses to imminent threats to the health and safety of children in the CACFP should be applied consistently and fairly.

In the CACFP, immediate action is required of sponsors once the determination of imminent threat is made, as described in this memorandum, even if the licensing agency has not yet taken formal action to revoke the day care home provider's license or approval. If the proper authorities (may include, but not limited to CDHS licensing staff, fire department personnel, law enforcement, health department officials) indicate it is safe to leave the day care home while the investigation continues, the monitor and sponsoring organization must immediately initiate action as described in this memorandum.

## Regulatory processes in response to health and safety threats in day care home providers:

CACFP regulations give sponsors ample authority to act should they find that children at a day care home provider are not safe or that the day care home provider has engaged in activities that threaten public health or safety. Even if the proper authorities indicate it is safe for the monitor to leave a home during further investigations or inquiry, the monitor and sponsor must still initiate the suspension and serious deficiency process [7 CFR 226.16(l)(4)] described in this memorandum.

USDA Food and Nutrition Service expects sponsors to take immediate action to stop payments and suspend the day care home provider's CACFP participation and declare the home seriously deficient, regardless of any formal procedures pending or underway by the licensing authorities to revoke the home's license or approval. Applying the serious deficiency process further minimizes risk to the CACFP and underscores the sponsor's authority to determine whether a facility meets the requirements for CACFP participation.

### ***Serious Deficiency, Suspension and Proposed Termination procedures for day care home providers (imminent threat to health and safety)***

The suspension procedures outlined in the regulations [7 CFR 226.16(l)(4)(ii) - (iv)] require the sponsor to notify the day care home provider that its CACFP participation has been suspended, that the day care home provider has been determined seriously deficient, and that the sponsor proposes to terminate the day care home provider's agreement for cause. The sponsor also must provide a copy of the notice to the CDPHE-CACFP. The CDPHE-CACFP will monitor the process and provide technical assistance when needed.

A suspension is the only time a sponsor can combine a notice of serious deficiency with a notice of proposed termination and proposed disqualification. A suspension is the only time a sponsor can stop paying day care home providers before providing the opportunity to correct the problems and appeal the termination.

The notice must state:

- The serious deficiency found;
- That the day care home may only appeal the proposed termination;
- That participation, including all CACFP payments, is suspended until the appeal is concluded;
- That if the hearing official overturns the suspension, the day care home provider may claim reimbursement of eligible meals served during the suspension;
- That termination from the CACFP will result placement of the day care home provider on the National Disqualified List;
- That the day care home provider's voluntary termination of its agreement with the sponsoring organization after receiving the notification will still result in the day care home provider's formal termination by the sponsoring organization and placement on the National Disqualified List; and
- The sponsoring organization's appeals procedures [7 CFR 226.16(l)(4)(ii)(A)(ii)(A)-(E)].

The CDPHE-CACFP provides a prototype letter, adapted from the USDA prototype letter, *Notice of Serious Deficiency, Suspension, Proposed Termination and Proposed Disqualification for Providers (Combined notice - health threat)* as an attachment to this memorandum. The sponsoring organization must submit a copy of this letter to the CDPHE-CACFP office.

Once a day care home provider is suspended, participation, including all CACFP payments, remains suspended until the administrative review is complete if the day care home provider submits a request for appeal by the established deadline. If the suspension is overturned following the administrative review, the day care home provider may continue participation and may claim reimbursement for eligible meals served and documented during the suspension period.

CACFP regulations prohibit a sponsoring organization from making any Program payments to a day care home provider that has been suspended until any appeal of the proposed termination is completed. If the suspended day care home prevails in the appeal of the proposed termination, the sponsoring organization must reimburse the day care home for all eligible meals served during the suspension period that are properly documented [7 CFR 226.16(l)(4)(iv)]. If the provider loses the appeal, payments are not to be made to the provider.

***Day care home provider agreement termination and disqualification procedures (imminent threat to health and safety)***

If the day care home provider appeals the sponsoring organization's suspension, proposed termination, and proposed disqualification, and the hearing official upholds the sponsoring organization's action, the sponsoring organization will terminate the day care home provider's agreement and disqualify the day care home provider immediately following the hearing official's decision. The sponsoring organization must issue the notice of termination and disqualification to the day care home provider [7 CFR 226.16(l)(4)(iii)].

The notice must state:

- That the day care home provider has been terminated from the Program; and
- That the day care home provider will be added to the National Disqualified List.

The CDPHE-CACFP provides a prototype letter, adapted from the USDA prototype letter, *Notice of Termination and Disqualification - Suspension of Day Care Home Provider for Imminent Threat to Health and Safety* for use if the sponsoring organization wins the appeal/prevails/decision is upheld. The sponsoring organization must submit a copy of the letter issued to the day care home provider to the CDPHE-CACFP office.

If the day care home provider does not request an appeal, the sponsoring organization will immediately terminate the day care home provider's agreement and disqualify the day care home provider when the opportunity for the provider to request the appeal expires. At the same time, the sponsoring organization must issue the notice of termination and disqualification to the day care home provider.

The CDPHE-CACFP provides a prototype letter, adapted from the USDA prototype letter, *Notice of Termination and Disqualification - Suspension of Day Care Home Provider for Imminent Threat to Health and Safety* for use if a provider does not submit a request for appeal. The sponsoring organization must submit a copy of this letter to the CDPHE-CACFP office.

If the day care home provider requests an appeal and the hearing official overturns the sponsoring organization's action to suspend, terminate, and disqualify the day care home provider, the sponsoring organization must temporarily defer the serious deficiency and withdraw the suspension.

The CDPHE-CACFP provides a prototype letter, adapted from the USDA prototype letter, *Notice of Temporary Deferment of Serious Deficiency, Suspension, Proposed Termination and Proposed Disqualification for DCHs*, for use if the hearing official overturns the sponsoring organization's action. The sponsoring organization must submit a copy of the letter to the CDPHE-CACFP office.

Please contact the CDPHE-CACFP office for further assistance or questions about any of the procedures described in this memorandum.

